

P-999/R-88-357 SEVERING LOCAL RESALE ISSUE, INITIATING SEPARATE LOCAL
RESALE DOCKET AND NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of a Rulemaking by the
Minnesota Public Utilities Commission
Governing Resale and Sharing of Local
Telephone Service

ISSUE DATE: May 30, 1990

DOCKET NO. P-999/R-88-357

In the Matter of a Commission Initiated
Proceeding to Determine Whether Resale of
Local Telephone Service is in the Public
Interest

DOCKET NO. P-999/CI-90-235

ORDER SEVERING LOCAL RESALE
ISSUE, INITIATING SEPARATE LOCAL
RESALE DOCKET AND NOTICE AND
ORDER FOR HEARING

PROCEDURAL HISTORY

On December 19, 1989, the Commission issued an Order in this matter, Order Establishing a Public Hearing to Determine Whether Resale of Local Telephone Service is in the Public Interest, Directing Northwestern Bell to Submit Cost Study, and Authorizing Staff to Draft Rules Regarding Shared Tenant Services, Pay Phones Providers and the Resale of Long Distance Services. In the Order, the Commission noted that the record of the proceeding did not contain adequate information that would enable the Commission to determine whether or not the resale of local telephone service is in the public interest and whether, therefore, it would be allowed in Minnesota. The Commission stated that it needed additional information to fully analyze the issue before making a final decision.

Also, the Commission noted that it would hold another public hearing, after it received the additional information, to determine whether the resale of local telephone service was in the public interest. The Order required NWB to submit a detailed study that would show, if any, the impact of the resale of local telephone service upon its customers, operations, revenues, expenses, etc. All parties were given 90 days from the date they receive NWB's study to file comments with the Commission.

On January 2, 1990, NWB filed a Motion for Clarification of the Commission's December 19, 1989 Order.

On January 16, 1990, the Commission issued an order clarifying the procedures it would employ to

safeguard the proprietary status, if any, of the study to be provided by NWB pursuant to the December 19, 1989 Order. The Commission also reset the due date for that report: 15 days from the issue date of the clarifying order or January 31, 1990.

On January 31, 1990, NWB filed its study and proposed protective order regarding the study.

On February 12, 1990, Enhanced TeleManagement Inc. (ETI) filed comments regarding NWB's proposed protective order.

On February 14, 1990, NWB filed a letter responding to ETI's comments on the proposed protective order.

On March 2, 1990, ETI filed a Motion to Compel Discovery and on March 5, 1990 filed a Motion to Strike NWB's Study.

On March 21, 1990, NWB filed comments responding to ETI's Motion to Compel Discovery.

On April 4, 1990, the Commission met on its own motion to consider these matters.

On April 17, 1990, the Commission issued a Notice of Commission Action informing parties of the findings and decisions it made at its April 4, 1990 meeting:

1. That the study submitted by Northwestern Bell Telephone Company d/b/a US West was inadequate and did not meet the standard set by the Commission in its December 19, 1989 and January 16, 1990 Orders;
2. To sever the resale of local telephone service from this docket and establish a new docket for resale of local telephone service;
3. To give notice to the parties to the current docket of the Commission's intent to sever the issue of resale of local telephone service from the rule-making docket and inviting parties to submit comments regarding the scope and issues for the contested case hearing within ten (10) days of the issue date of the notice.
4. To issue a formal order containing its full decision referring the new docket to the Office of Administrative Hearings for a contested case Hearing with detailed instructions regarding the scope and issues of the case following receipt of the parties' comments.

Within the ten-day comment period ending April 27, 1990, the Commission received comments regarding the scope and issues for the contested case hearing from Teletech Resources Corp., Enhanced TeleManagement Inc. (ETI), Northwestern Bell Telephone Company (NWB), the Minnesota Independent Coalition (MIC), Contel of North Dakota Inc. (Contel), Minnesota Department of Public Service (the Department) and the Office of the Attorney General (OAG).

FINDINGS AND CONCLUSIONS

In the course of this rulemaking docket regarding the resale and sharing of local telephone service, the Commission has attempted to gather an adequate factual basis for determining whether and under what conditions it would authorize the non-pay phone,¹ non-STS² varieties of resale of local telephone service in Minnesota.

Initially, the Commission utilized a task force format to gather the information it needed. Upon review of a Commission Staff Report in November 1989, the Commission found that the task force method had not been successful in developing an adequate factual base to determine whether the resale of local telephone service was in the public interest. In its December 19, 1989 Order, therefore, the Commission adopted a study and comment fact gathering procedure. The Commission directed Northwestern Bell Telephone Company (NWB) to produce a detailed study containing certain relevant information and providing the parties to this docket an opportunity to comment regarding NWB's study. Specifically, the Commission directed NWB to:

...file with the Commission a study regarding the impact of the resale of local telephone service upon its customers, operations, revenues and expenses and serve a copy of the study on all the parties....The study shall include an explanation of the methodology and reasoning used in reaching its conclusions and the data relied on to reach those conclusions. December 19, 1989 Order, Ordering Paragraph 2 at page 7.

The study was to be in "...sufficient detail to allow evaluations of its conclusions". December 19 Order at page 5.

The study filed by NWB on January 31, 1990 in response to this directive does not meet the standard established in the Commission's order and does not provide the Commission or the parties to this matter adequate information upon which to evaluate the study's conclusions or to proceed in this docket in a meaningful way. In light of NWB's failure to provide a useful report during 14 months of the task force's work or in response to a specific directive from the Commission, the Commission concludes that the study/comment process is no longer the appropriate means for establishing the

¹ The Commission has already authorized pay telephone service, one of the several varieties of resale of local telephone service, and established the conditions under which it must be offered in Minnesota. In the Matter of the Complaint by Airport Systems, Inc., Tonka Tools, Inc. and Country Village Spur Upon Refusal of Northwestern Bell Telephone Company to Allow Attachment of Customer-Owned Coin-Operated Telephones, Docket No. P-421/C-82-4645 (June 29, 1984).

² The subset of local resale known as private shared tenant services (PSTS) is also authorized in Minnesota. In 1988, the Minnesota legislature adopted Minn. Stat. § 237.68 which authorized PSTS and set forth the conditions upon which the PSTS provider would be exempt from the requirement of obtaining a certificate of authority from the Commission pursuant to Minn. Stat. § 237.16.

factual basis that it seeks in this matter. In short, the Commission's investigation into the resale of local telephone service to determine whether it is in the public interest has reached the point where it must be pursued by contested case hearing.

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over the resale of local telephone service because the provider of such service to the public is a "telephone company" as defined by Minn. Stat.

§ 237.01, subd. 2 and the Commission has jurisdiction and supervisory powers over telephone companies under Minn. Stat.

§ 237.02. The Commission also has jurisdiction under Minn. Stat. § 237.16 to determine whether and under what conditions the resale of local telephone service will be allowed in any locality where there is another telephone company "...already furnishing local telephone service,...." Minn. Stat. § 237.16, Subd. 1.

The Commission finds that it cannot determine, on the basis of the record before it whether and under what conditions the resale of local telephone service serves the public interest so as to warrant its authorization in Minnesota. That determination turns on specific facts which at this point will be best developed in formal evidentiary proceedings. Therefore, the Commission will refer the matter to the Office of Administrative Hearings for contested case proceedings.

II. Issues to be Addressed

The specific subject referred to the Office of Administrative Hearings for contested case proceedings is the resale of Centron/Centrex or PBX services as Centron/Centrex is currently tariffed and as PBX service currently exists. Shared tenants service covered by Minn. Stat. § 237.68, resale of local pay telephone service, and the resale of long distance service are not referred for contested case hearing but remain a part of the current rulemaking docket P-999/R-88-357.

In referring this matter for contested case hearing, it is the Commission's intention to develop a factual basis for determining whether and under what conditions the resale of Centron/Centrex as Centron/Centrex is currently tariffed or PBX services and as PBX service currently exists is in the public interest and what regulation should be applied to this activity if it is to be allowed. With this goal in mind, the contested case hearing shall address all relevant issues raised by the parties and at the close of the hearing, the Administrative Law Judge will make findings and recommendations with respect to these issues. The issues shall include but not be limited to the following:

1. Is the resale of Centron/Centrex in the public interest?
 - a. What are the benefits of the resale of Centron/Centrex services to the end-users?
 - b. What are the current and projected impacts of resold Centron/Centrex services on the general rate payers of affected local exchange companies? Parties should address what impact allowing resale of Centron/Centrex services would have on LEC operations, revenues, expenses and investments.
 - c. Does resale of Centron/Centrex technology geographically restrict or limit resale within a local calling area and, if so, does that affect the public interest determination?
2. Is the resale of PBX services in the public interest?
 - a. What are the benefits of the resale of PBX services to the end-users?
 - b. What are the current and projected impacts of resold PBX services on the general rate payers of affected local exchange companies? Parties should address what impact allowing resale of PBX services would have on LEC operations, revenues, expenses and investments.

- c. Are there significant differences in how resale of local service through PBX is used to provide service to end-users? For example, does the type of service, pricing, etc. of a PBX in a hotel/motel setting differ from PBX service, pricing, etc. in a commercial office setting. If so, do the various types of PBX resale require separate regulatory consideration?
3. What is the appropriate definition or definitions of local service resellers?
4. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, what regulation should be applied? For example, what should regulations require with respect to standards in the construction and installation of equipment and service quality, duty to provide service, discrimination, and funding obligations regarding TAP, TACIP and 911? Further, do Minnesota statutes currently permit the Commission to regulate local resellers as agents of the local exchange companies (LEC) through the LECs' tariffs, and if so would such regulation be effective?
5. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, what type of rate structure would be appropriate for the LEC to provide these services to the resellers?
6. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, how should resellers price their Centron/Centrex or PBX services to end-users?
7. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, what would be the LEC's responsibilities to the resellers and the end-users served by the resellers? For example, but not limited to:
 - a. In the context of PSTS providers, Minn. Stat. § 237.68 specifies LEC responsibilities regarding the location of and service to a "demarcation point" on the property where the private shared telecommunications system is located. Minn. Stat. § 237.68, subd. 2. The statute also specifies the LEC's responsibility to provide service to anyone located within a shared tenant services building at the demarcation point "within a reasonable time upon request." Minn. Stat. § 237.68, subd. 6. Should the LEC's responsibilities be similarly specified in any regulation of the resale of Centron/Centrex or PBX services?
 - b. What disconnection policy should govern the LECs disconnection of service to the reseller and its obligations, if any, to the reseller's customers?
 - c. In the event that the reseller should discontinue service to any or all of its customers for any reason, should the LEC have the responsibility as the "provider of last resort" to provide local telephone service directly to these customers?
8. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, what would be the responsibilities of the resellers to the LECs and the end-users? For example, what policies should govern:

- a. The reseller's authority to disconnect service to its customers?
 - b. The reseller's responsibility for providing appropriate information to LECs for use in directories, for 911 service, and for other customer record keeping purposes.
9. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, should the Commission grant authority on a state-wide basis or limit that authority to specified geographic service areas?
10. Are there differences between geographic service areas within the state that would render resale of Centron/Centrex service or the resale of PBX services in the public interest in some service areas and not in the public interest in others?

III. Procedural Outline

Administrative Law Judge -- The Administrative Law Judge assigned to this case is Richard C. Luis. His address and telephone number are as follows: Office of Administrative Hearings, Fifth Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; (612) 349-2542.

Prehearing Conference -- A prehearing conference has been scheduled by the Administrative Law Judge for June 20, 1990 at 9:30 a.m. in the Commission's Large Hearing Room, 780 American Center Building, 150 Kellogg Boulevard, Saint Paul, Minnesota 55101.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, and similar issues.

Intervention -- The Commission is naming the following parties to this proceeding: Minnesota Department of Public Service (the Department), the Office of the Attorney General (OAG), Northwestern Bell Telephone Company (NWB), Enhanced TeleManagement, Inc. (ETI) and the Minnesota Independent Coalition (MIC). Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200. Only parties named by the Commission or allowed as intervenors will be placed on the service list for this proceeding.

Hearing Procedure -- Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat.

§§ 14.57-14.62 (1988); the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7830.0100 to 7830.4400. Copies of these rules and statutes may be purchased from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may

be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1988).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Margie Hendriksen, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101, (612) 296-0410.

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

Ex Parte Communications -- Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The issue of whether the resale of Centron/Centrex and PBX local telephone service is in the public interest is hereby severed from this rulemaking Docket No. P-999/R-88-357 and a new docket is hereby established for that issue: Docket No. P-999/CI-90-235.
2. The new docket, P-999/CI-90-235, is hereby referred to the Office of Administrative Hearings where a contested case proceeding shall be held to determine whether and under what conditions the resale of Centron/Centrex or PBX service is in the public interest and to address the ten specific issues identified in this Order and other issues that the Administrative Law Judge deems relevant to the purposes of the contested case proceeding enunciated in this order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

400 Summit Bank Building
310 South Fourth Avenue
Minneapolis, Minnesota 55415

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

780 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

In the Matter of a Rulemaking by the
Minnesota Public Utilities Commission
Governing Resale and Sharing of Local
Telephone Service

MPUC Docket No.P-999/CI-90-235

OAH Docket No.

NOTICE OF APPEARANCE

Date of Hearing: June 21, 1990 at 9:30 a.m.

Name and Telephone Number of Administrative Law Judge:

Richard C. Luis
612/349-2542

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____